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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,312	07/01/2003	Robert Kast	LEGAP005	3939
21912 7590 04/20/2007 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			EXAMINER NGUYEN, CINDY	
			ART UNIT 2161	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/20/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/611,312

Applicant(s)

KAST ET AL.

Examiner

Cindy Nguyen

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-8,18,19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 18 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/29/07 has been entered.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claim 18 is objected to because of the following informalities:

As to claim 18 (line 9), there is a mistyping/ grammar error, Examiner assumes the words "to not" as "do not". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As to claim 1, at line 6, it is unclear what does the claimed "first operation" refer to?

As to claim 8, at line 10, it is unclear what does the claimed "first operation" refer to?

As to claim 19, at line 8, it is unclear what does the claimed "first operation" refer to?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 4, 6-8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al. (US 20030074378) (Midgley) in view of Hart (US 6430577).

Regarding claims 1, 8 and 19, Midgley discloses: a method, a system and a computer program product for transferring data comprising:

performing a synchronization operation (i.e., synchronization replication process paragraph 0033, lines 14-15, Midgley) wherein the synchronization operation uses a first processing thread (i.e., synchronization replication process operates in cooperation with the agent processes, paragraph 0033, lines 14-15) to copy a first file from a first data storage to a second data storage using a first connection (i.e.,

synchronization replication process that creates a replicated copy of selected source data files and maintains these replicated data files as target database files that can be stored in the attached memory , paragraph 0038, lines 7-10, Midgley) , and a second a second processing thread to copy file from the first data storage to the second data storage using a second connection (i.e., synchronization replication process that creates a replicated copy of selected source data files and maintains these replicated data files as target database files that can be stored in the attached memory , paragraph 0038, lines 7-10, Midgley).

However, Midgley didn't disclose: wherein the first file is copied substantially concurrently with the copying of the second file, and wherein the first operation results in a first copied file and a second copied file in the second data storage. On the other hand, Hart discloses: wherein the first file is copied substantially concurrently with the copying of the second file, and wherein the first operation results in a first copied file and a second copied file in the second data storage (i.e., by use of parallel transfer modes for transferring the logically partitioned audit files, there is a more efficient transfer of audit blocks at a higher speed in order to expedite the synchronization process, col. 21, lines 19-25, Hart). Thus, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include concurrently with the copying of the second file In the system of Midgley as taught by Hart. The motivation being to enable speed up in order to expedite the synchronization process (col. 21, lines 21-22, Hart).

Midgley discloses: performing a real time replication operation wherein the real time replication operation updates the first copied file and the second copied file in an order determined at least in part by an order in which changes were made to the first file and the second file, respectively, as stored in the first data storage (i.e., the dynamic execution process may play the captured changes to the target files. This ensures the target files are updated in a transactional safe way, and keeps the target files as up to date as possible while still keeping them transactional safe, paragraphs 0048, lines 22 to 31, Midgley).

In addition, Midgley discloses: a processor (12, fig. 1, Midgley); a first memory (cache storage system 16, fig. 1) coupled to the processor (12, fig. 1, Midgley), wherein the first memory is associated with a first file and a second file (i.e., files in the backup server paragraph 0031, line 11, Midgley).

Regarding claim 4, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley/Hart discloses: wherein the first file and the second file are copied regardless of order (i.e., parallel transfer files, col. 21, lines 19-25, Hart). Thus, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the copying of the files regardless of order in the system of Midgley as taught by Hart. The motivation being to enable speed up in order to expedite the synchronization process (col. 21, lines 21-22, Hart).

Regarding claim 6, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley/Hart discloses: wherein a first command associated with the synchronization operation can be processed by a first thread or a second thread (i.e., synchronization replication process operates in cooperation with the agent processes, paragraph 0033, lines 14-15), and a second command associated with the real-time operation can be processed by the second thread i.e., the dynamic execution process may play the captured changes to the target files. This ensures the target files are updated in a transactional safe way, and keeps the target files as up to date as possible while still keeping them transactional safe, paragraphs 0048, lines 22 to 31, Midgley).

Regarding claims 7, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley/Hart discloses: wherein the copying of the first file is associated with a first connection between the first data storage and the second data storage, and the copying of the second file is associated with a second connection between the first memory and the second memory (i.e., by use of parallel transfer modes for transferring the logically partitioned audit files, there is a more efficient transfer of audit blocks at a higher speed in order to expedite the synchronization process, col. 21, lines 19-25, Hart). Thus, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the copying of the first file is associated with a first connection between the first data storage and the second data storage, and the copying of the second file is associated with a second connection between the first memory and the second memory In the system of

Midgley as taught by Hart. The motivation being to enable speed up in order to expedite the synchronization process (col. 21, lines 21-22, Hart).

Allowable Subject Matter

Claims 18, 21-25 are allowed in light of the applicant arguments and in light of the prior art made of record.

The following is an examiner's statement of reasons for allowance: the prior art of record failed to disclose: make obvious, or otherwise suggest a system for transferring data associated with a real-time data replication system comprising: wherein the synchronization thread is configured to process a synchronization command substantially concurrently with the processing a by the main thread of a synchronization command and to not process a synchronization command at the time the main thread is processing a dynamic replication command as recited in claim 18.

The dependent claims 21-25, being further limiting to the independent claim 18 definite and fully enable by the specification are also allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cindy Nguyen

